

EPA EVALUATION OF PENNSYLVANIA FINAL PHASE I WATERSHED IMPLEMENTATION PLAN

Overview

Pennsylvania has utilized a strong stakeholder involvement process throughout the Watershed Implementation Plan (WIP) development process. The final Phase I WIP contains significant improvements, including strategies to increase compliance with agricultural regulations. The WIP lacks clear strategies to achieve urban stormwater reductions, however.

Allocations

Pennsylvania meets its nutrient and sediment allocations for each basin in the final TMDL. After adjusting for EPA-approved nitrogen and phosphorus exchanges, Pennsylvania's WIP input deck resulted in statewide loads that are 2% over for nitrogen and phosphorus, and 5% under for sediment allocations. EPA and the Commonwealth have reached agreement on further nonpoint source reductions in order to achieve allocations both statewide and in each basin, as documented in the final TMDL. The further reductions are supported by contingencies included in the WIP and EPA's commitment to track progress and take any necessary federal actions to ensure these reductions are achieved and maintained.

Agriculture

Key improvements since draft WIP:

- Pennsylvania has outlined a very detailed strategy for significantly increasing compliance with agricultural regulations and for advancing manure technologies.
- The WIP details a specific approach for tracking agricultural conservation to develop verification protocols for crediting non-cost shared practices in the Chesapeake Bay Watershed Model.

EPA actions: Enhanced oversight and actions

- Based on Pennsylvania's ability to demonstrate near-term progress implementing the agricultural section of its WIP, including EPA approval for its CAFO program and enhanced compliance assurance with state regulatory programs, EPA will assess in the Phase II WIP whether additional federal actions, such as shifting AFO loads from the load allocation to the wasteload allocation or establishing more stringent wasteload allocations for WWTPs, are necessary to ensure that TMDL allocations are achieved.
- EPA will use its national review of CAFO State Technical Standards in 2011 and beyond to identify any deficiencies in the State Technical Standards for protecting water quality, including Pennsylvania's phosphorus management program. EPA reserves its authority to object to permits if they are not protective of water quality. EPA will continue to engage Pennsylvania about ways to phase out the practice of winter spreading of manure.

Urban Stormwater

Key improvements since draft WIP:

- The WIP provides a strong description of Chapter 102 regulations and what Pennsylvania can enforce and regulate for no net change in stormwater runoff.
- A "no net increase" provision is required to maintain existing hydrology or demonstrate that at least 20% of a previously disturbed site has the hydrologic conditions of meadow or better.

Key areas for improvement:

- Pennsylvania DEP continues to assert that the scope of the MS4 program is limited to the conveyance system only, and does not include the construction and post-construction requirements.

- Pennsylvania has not demonstrated a high level of compliance assurance activities nor enhanced the field resources available to support an enforcement of urban stormwater programs.
- The requirement for an MS4 to have a TMDL Implementation Plan does not include the Chesapeake Bay TMDL, and lacks supporting documentation to quantify how local TMDL implementation plans will meet Chesapeake Bay nutrient and sediment allocations.
- Pennsylvania's WIP lacks clear strategies to achieve the almost 40% reduction in urban loads that the Commonwealth includes in its WIP input deck.

EPA actions: Backstop allocations, adjustments and actions

- EPA will transfer 50% of the urban stormwater load that is not currently subject to NPDES permits from the load allocation to the wasteload allocation. EPA is doing this to signal that it is prepared to designate discharges as requiring NPDES permits to ensure nutrient and sediment reductions are achieved and maintained. Urban areas would only be subject to NPDES permit conditions protective of water quality as issued by the Commonwealth upon designation. EPA will consider this step if Pennsylvania does not achieve reductions in urban stormwater loads as identified in the WIP. EPA may also pursue designation activities based on considerations other than TMDL and WIP implementation.
- Based on Pennsylvania's ability to demonstrate near-term progress implementing the urban stormwater section of its WIP, including the reissuance of PAG-13 and PAG-2 general permits for Phase II MS4s and construction that are protective of water quality, EPA will assess in the Phase II WIP whether additional federal actions, such as establishing more stringent wasteload allocations for WWTPs, are necessary to ensure that TMDL allocations are achieved.

Wastewater

Key improvements since draft WIP:

- The WIP includes permit numbers for additional non-significant facilities covered under the PAG-04 and 05 general permits.
- Pennsylvania added language on a process for granting 25 lb/yr credit to POTW's for each septic system retired, and on implementation schedules for significant WWTP upgrades.

EPA actions: Enhanced oversight and actions

- EPA is establishing individual wasteload allocations for significant wastewater plants in the TMDL to increase assurance that permits are consistent with the overall wasteload allocation. Individual allocations do not commit wastewater plants to greater reductions than what the jurisdiction has proposed in its WIP. Provisions of the TMDL Report allow for allocation modifications within a basin to support offsets and trading opportunities.
- EPA may consider federal actions such as revisiting wastewater allocations if the Phase II WIP does not demonstrate adequate progress toward implementing WIP strategies for agriculture and stormwater.
- EPA will review NPDES permit conditions to ensure that they are consistent with the loads and assumptions of the Chesapeake Bay TMDL.

General Note on EPA Actions

EPA will assess annual progress and track 2-year milestone commitments. EPA may take additional actions beyond those listed above, as described in its December 29, 2009 letter, to ensure that nitrogen, phosphorus, and sediment reductions identified in the WIP and needed to meet TMDL allocations are achieved.